motor cycle. There are also restrictions as to employment. Taking all I have said, a reasonable balance has to be struck.

Mr. Chellam submits that future loss of earnings be calculated on a monthly loss of income of between $100 and $200, and, the plaintiff, being 19 years of age, a multiplier of 30 or 31 years be used.

For the plaintiff, I have the benefit of a written submission in which are given a number of past awards of general damages for loss of a leg. In my view, for the reasons I have given, the best is the latest, *Liew Kwee Chin* v. *Hong Huat Timber Trading Co.*[2] In this case Kulasekaram J. awarded $35,000 to the plaintiff, a lorry driver, who lost his leg as a result of an accident in a timber yard. It was an injury suffered in 1975. For the plaintiff's injury in 1978, taking the factors I have mentioned into account, I award $40,000, as general damages for the amputation of the right leg.

As regards future loss of earnings, counsel for the plaintiff urges upon me to take 34 years of purchase, and, notwithstanding that the plaintiff must mitigate his damages, that I compute the loss of monthly income at $300.

I am of the view that the future employment prospects for the plaintiff, despite his disability, are good. When he has adjusted his mental attitude to the disability which he has not yet accepted, he can earn reasonably good wages. But the disability does put the plaintiff at a disadvantage. That being the view I take, I accept Mr. Murugason's submission that the computation be at $300 per month, but as regards years of purchase, I accept Mr. Chellam's submission that it be 31 years.

There will be judgment for the plaintiff for special damages of $9,594.70 and general damages of $96,124, being $40,000 for loss of leg and $56,124 for loss of future earnings, together with costs and the usual consequential orders.

Claim allowed.

Solicitors: *Murugason & Co.; Joe Chellam.*

MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. SIHABDUIN BIN HAJI SALLEH & ANOR.

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Syed Othman F.JJ.) July 3, 1979, June 23 & August 27, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 67 of 1977]

Criminal Law and Procedure — Security case — Whether court entitled to acquit accused at end of prosecution case on ground that prosecution had not proved a prima facie case — Essential (Security Cases) Regulations, 1975, rr. 3, 13, 14, 15 and 17 — Criminal Procedure Code (F.M.S. Cap. 6), s. 180.

In this case the respondents had been charged with offences under the Internal Security Act and tried in accordance with the Essential (Security Cases) Regulations, 1975. After the prosecution had closed its case, the learned trial judge acquitted and discharged the respondents on the ground that the prosecution had not proved a *prima facie* case. The Public Prosecutor appealed and relied on regulation 13 of the Regulations which reads:— "When the case for the prosecution is closed, the court shall call on the accused to enter on his defence."

Held, by a majority (Wan Suleiman F.J. dissenting): in a security case at the end of the prosecution case the court is not obliged to call on the accused to enter on his defence unless the prosecution has then proved a *prima facie* case against him.

Cases referred to:-

(1) *Johnson Tan Han Seng* v. *Public Prosecutor* [1977] 2 M.L.J. 66.

(2) *Public Prosecutor* v. *Chea Soon Hoong* Federal Territory Criminal Trial No. 23 of 1976 (unreported).

(3) *Public Prosecutor* v. *Yap Seng Keat* Federal Territory Criminal Trial No. 49 of 1976 (unreported).

(4) *Duport Steels Ltd.* v. *Sirs* [1980] 1 All E.R. 529.

FEDERAL COURT.

On July 3, 1979.

Sharkawi bin Alis (Deputy Public Prosecutor) for the appellant.

Tengku Suleiman ibni Sultan Ismail for the respondents.

On June 23, 1980.

Shaikh Daud bin Haji Mohamad Ismail (Deputy Public Prosecutor) for the appellants.

K. Pasupathy (*Victor Isaacs* with him) for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the majority judgment of the Court): The issue here is whether in a security case tried in accordance with the Internal (Security Cases) Regulations, 1975, ("the regulations"), when the prosecution has closed its case, the court is obliged to call on the accused to enter on his defence, even if the prosecution has not made out against him a case which, if unrebutted, would warrant his conviction.

This point was first argued before three of us, on July 3, 1979, when we reserved judgment. In the course of considering our draft judgment, we decided that it would be desirable to have a point of law of

such importance as this re-argued before five judges; and accordingly it was re-argued on June 23, 1980, in the presence of two additional members of the court, namely our brothers Raja Azlan Shah, C.J. Malaya, and Lee Hun Hoe, C.J. Borneo.

At first this appeal was argued on behalf of the accused by Tengku Suleiman. The date of re-argument was fixed to enable him, who was then away overseas, to appear again before us. But as it happened, at the second hearing the accused were represented by Mr. Pasupathy and Mr. Victor Isaacs.

Tengku Suleiman, later Mr. Pasupathy, has been instructed only by the second accused. The court has not been able to serve the appeal record on the first accused; and they were assigned to represent him and to argue on his behalf despite the fact that neither had received instructions; but the appeal to be limited at this stage only to consideration of the issue stated at the beginning of this judgment.

At the first hearing the Public Prosecutor was represented by Encik Sharkawi and at the second by Shaikh Daud.

The first accused was charged with having under his control in a security area a firearm contrary to section 57(1) of the Internal Security Act, 1960, and the second accused with being found in his company contrary to section 58(2) of the same Act.

After the prosecution had closed its case, the learned trial judge acquitted and discharged both accused, on the ground that the prosecution had not proved a *prima facie* case.

The Public Prosecutor contends that, this being a security case tried in accordance with the regulations, the learned trial judge erred in not calling on the accused to enter on their defence, in view of regulation 13 which provides:

"When the case for the prosecution is closed, the court shall call on the accused to enter on his defence."

It will be observed that regulation 13 is diametrically opposed to section 180 of the Criminal Procedure Code which governs ordinary trials and which provides that:

"the court, if it finds [at the end of the prosecution case] that no case against the accused has been made out which if unrebutted would warrant his conviction, shall record an order of acquittal, or, if it does not so find, shall call on the accused to enter on his defence."

If the accused had been tried in accordance with the Code, clearly the learned judge was right in acting as he did. Was he right in acting as he did in this case, tried not under the Code but under the regulations?

What if in a security case all the prosecution did was to produce the accused, have the charge against him read and explained and then produce only formal evidence relating to exhibits? Should the court then have to call on the accused to enter on his defence? Shaikh Daud's answer was that the Public Prosecutor would use regulation 13 responsibly and not in an absurd way.

What if the prosecution relied on a cautioned statement made by the accused as the only evidence against him and the trial judge found that it had not been made voluntarily and declined to admit it in evidence? Would the court be obliged to call on the accused to enter on his defence? Shaikh Daud submitted yes, for (he said) the accused's right to remain silent had not been taken away by the regulations, and if he remained silent and called no evidence, he would be entitled to be acquitted and discharged. But what if he gave evidence or called evidence and he or his witnesses in cross-examination made admissions which served to fill in gaps in or otherwise supplement the prosecution case? It would appear from regulation 17 (reproduced below), which requires the court to decide "upon hearing and considering the evidence of both the prosecution and the defence as a whole", that the court would then be entitled to find him guilty, if it thought that on the whole of the evidence the prosecution had proved its case and that the defence had not thrown any doubt on it.

Shaikh Daud was able to cite only one authority in support of his contention that come what may, at the end of the prosecution case, the court must in a security case call on the accused to enter on his defence. It was *Johnson Tan Han Seng* v. *Public Prosecutor*.[1] There I said at page 73:

"The learned judge acquitted the accused at the end of the prosecution case without calling on him for his defence. With respect here too I think that he was in error, because what he did was flatly opposed to regulations 13 and 17...."

But as was pointed out to Shaikh Daud during arguments, the point in issue here did not arise there in the same acute way as it has done here, and so was not fully argued.

In answering the question before us, regulations 3(1), 14, 15 and 17 are also relevant and they provide as follows: —

"3. (1) These Regulations shall have effect with respect to security cases notwithstanding anything to the contrary contained in any written law; but, except in so far as the same are varied by these Regulations, the ordinary practice and procedure, when appropriate, shall apply to security cases.

14. (1) The accused or his counsel may then open his case, stating the facts or law on which he intends to reply and making such comments as he thinks necessary on the evidence for the prosecution; he may then examine his witness (if any) and after their cross-examination and re-examination (if any) may sum up his case.

(2) Where the accused elects to give evidence on oath or make a statement from the dock, his evidence or statement shall be taken before that of other witnesses for the defence, and, if he gives evidence on oath, he may be cross-examined by the prosecution or by any other accused, and the court may also put any question to him.

15. In all cases the prosecution shall have the right to reply on the whole case, whether the accused or his counsel adduces evidence or not.

17. The court shall decide on the guilt or innocence of the accused only at the conclusion of the case for the defence, and it shall so decide upon hearing and considering the evidence of both the prosecution and the defence as a whole, having regard to the justice of the case, without regard for the technicalities of the rules of evidence or procedure, or for any defect concerning the charge."

We have been able to find, apart from *Johnson Tan*,[1] two cases in which the effect of these regulations, in so far as they are material to the issue before us, has been considered.

First, there is a decision of Harun J. on October 26, 1976, in *Public Prosecutor* v. *Chea Soon Hoong alias Foo Soh Loh*,[2] unreported, in which he appears to have said that at the end of the prosecution case, the court must call on the accused to enter on his defence, regardless. He said:

"There are two main, ingredients to prove a charge under section 57 of the Internal Security Act, viz:

(i) the offence was committed in a security area without lawful excuse; and

(ii) the Accused had under his control the firearm or ammunition without lawful authority.

By virtue of Regulation 17 of the Essential (Security Cases) Regulations, I must accept the evidence of the prosecution as to the facts of the case at this stage. This covers the second ingredient."

The second case is a decision of Azmi J. on January 28, 1977, in *Public Prosecutor* v. *Yap Seng Keat*,[3] also unreported, in which he also appears to have said the same thing as Harun J. He said:

"The main encroachment into the ordinary practice of criminal law made by these Regulations is that, it is not necessary for the prosecution to prove their case beyond reasonable doubt at the close of their case, and it seems to me that the principle that the defence should not be called merely to clear any doubt in the prosecution case or to supplement any deficiency in their case does not apply."

In construing the regulations in order to answer the question posed in this appeal, the following considerations apply.

First, it is a cardinal principle of our system of criminal justice that an accused person is presumed to be innocent, that the onus is on the State to prove beyond reasonable doubt that he is guilty, and that the practice for as long as we can remember is for the court to hear the evidence for the prosecution first, and that at the end of the prosecution case the court has to consider whether or not the prosecution has made out a case against the accused which, if unrebutted, would warrant his conviction, and that the court should call on the accused to enter on his defence if and only if the court is of the opinion that the prosecution has made out such a *prima facie* case against the accused, and not otherwise.

Secondly, the relevant law-maker has power to amend the law at any time to change this principle so as to render it unnecessary for the prosecution to prove a *prima facie* case at the end of its case, so that thereafter the court is obliged to call on the accused to enter on his defence, even if no *prima facie* case has been proved against him.

Thirdly, if the law-maker so amends the law, to paraphrase the words of Lord Diplock at page 541 in *Duport Steels Ltd.* v. *Sirs*,[4] the role of the judiciary is confined to ascertaining from the words that the law-maker has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the words is plain and unambiguous it is not for judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral; or to paraphrase the words of Lord Scarman at page 551 in the same case, in the field of statute law the judge must be obedient to the will of the law-maker as expressed in its enactments, the judge has power of choice where differing constructions are possible, but he must choose the construction which in his judgment best meets the legislative purpose of the enactment. Even if the result be unjust but inevitable, he must not deny the statute; unpalatable statute law may not be disregarded or rejected, simply because it is unpalatable; the judge's duty is to interpret and apply it.

Fourthly, in criminal law because of the cardinal principle that an accused person is presumed innocent and that it is the duty of the prosecution to prove his guilt, any ambiguity in a statute must be resolved in favour of the liberty of the subject.

Applying the above considerations, we are of the opinion that in a security case at the end of the prosecution the court is not obliged to call on the accused to enter on his defence unless the prosecution has then proved a *prima facie* case against him. In our judgment, regulation 13 is not clear. It does not say that at the end of the prosecution case the court must call on the accused to enter on his defence in any case. All it says is that it must call on the accused to enter on his defence. In our judgment, the word "defence" must be read to mean "defence if any", so that there is no duty on the court to call on him to enter on his defence if there is nothing for him to defend, which is the case if no *prima facie* case has been proved against him by the end of the prosecution case. Our conclusion would have been different if the regulation had ended with the words "notwithstanding that no case has been made out against him which, if unrebutted, would have warranted his conviction." From regulations 14 and 15 it is clear that if called on to enter on his defence the accused is not obliged to give evidence and that he may therefore remain totally silent and not call witnesses. The words in regulation 17 requiring the court to consider the evidence both of the prosecution *and the defence* before determining the guilt or innocence of the accused do not therefore mean that the accused must in every case be called upon to enter on his defence.

For the above reasons we would dismiss this appeal in so far as the point of law is concerned.

Wan Suleiman F.J. (dissenting): The issue here is whether in a security case trial in accordance with the Essential (Security Cases) Regulations, 1975, when the prosecution has closed its case, the court is obliged to call on the accused to enter on his defence, even if the prosecution has not made out against him a case, which, if unrebutted, would warrant his conviction.

Having given this matter considerable thought, I yet find myself unable to change my view that we were right in *Johnson Tan's* case,[1] where at page 73 the learned Lord President held that the learned trial judge was wrong in acquitting the accused at the end of the prosecution case without calling on him to make his defence "because what he did is flatly opposed to regulations 13 and 17...".

Since the trial was in the High Court a comparison with Chapter XX, which pertains to trials

before the High Court without Assessors under the Criminal Procedure Code will make it clear that the law makers in setting out the modified procedure for security trials were well aware of the existing criminal procedure and has every intention of effecting a substantial change thereto.

Beginning with section 178 of the Criminal Procedure Code, I note that regulation 11 of the regulations, which bears the same marginal title i.e. "Commencement of trial" is identical. Section 179 and regulation 12, which again bear identical marginal titles, make no alteration in procedure.

Only when we come to section 180, and compare it with the parallel regulation 13 do we find a significant difference. Section 180 reads:

"When the case for the prosecution is concluded the court, if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction shall record an order of acquittal, or if it does not so find, shall call on the accused to enter on his defence."

Compare these words to those of regulation 13 which reads:

"When the case for the prosecution is closed, the court shall call on the accused to enter on his defence."

Why, one may ask were the material words "if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction shall record an acquittal or if it does not so find" omitted?

Azmi J. in *Public Prosecutor* v. *Yap Seng Keat*[3] has noted one major reason, a reason if I may say with deepest respect, of great significance, for his Lordship said:

"The main encroachment into the ordinary practice of criminal law made by these Regulations is that, it is not necessary for the prosecution to prove their case beyond reasonable doubt at the close of their case, and it seems to me that the principle that the defence should not be called merely to clear any doubt in the prosecution case or to supplement any deficiency in their case does not apply."

Proceeding with our comparison, sections 180 and 182 are substantially the same as regulations 14 and 15 respectively.

It is true that the latter two regulations make it clear that if called on to enter his defence an accused person retains the right to remain silent himself and need not call witnesses in his defence.

But in my view, the very presence of regulation 17 reinforces the argument that the law makers had changes in the existing law in mind. If regulation 13 leaves any doubt as to the changes intended the choice of words in regulation 17 should serve only to dispel such doubts.

"The court shall decide on the guilt or innocence of the accused *only* at the conclusion of the case for the *defence*" the regulation proceeds to say, and moreover "it shall so decide upon hearing and considering the evidence of *both the prosecution and the defence as a whole....*" (the emphasis is mine).

Can there be more manifest indication of the intention of Parliament to modify, in favour of the prosecution, the pre-existing state of criminal procedure in cases coming within the regulations?

The words of Lord Diplock in an authority cited by my Lord President, *Duport Steels Ltd.* v. *Sirs*,[4] seem to me to be particularly apt, for "the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral."

The advantage to the prosecution can only be but slight and that should include whatever comfort the knowledge that the defence would be called in any case has to offer to the Prosecutor where things begin to go wrong with the prosecution case, but the presumption of the innocence of an accused person remains unchanged.

It would not be out of place to suggest that judges should be urged to state at the close of prosecution case whether in their finding a *prima facie* case has or has not been made out by the prosecution, so that the accused person would know when it would be to his advantage to remain silent.

I would, with respect, allow the appeal, set aside the order of acquittal and order the accused to make their defence.

Appeal dismissed in so far as the point of law was concerned.

Solicitors: *Tengku Seri Laksamana & Isaacs.*

PUBLIC PROSECUTOR v. DATUK TAN CHENG SWEE & ANOR.

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Wan Suleiman, Chang Min Tat & Syed Othman F.JJ.) June 2 & August 27, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 21 of 1979]

Criminal Law and Procedure — Charge of corruption — Corrupt practice in approval of plans — Accused called to enter on their defence — Whether there was mens rea — Doing of an act forbidden by statute — Necessity not shown — Whether accused had rebutted prosecution case — Sentence — Municipal Ordinance (S.S. Cap. 133), s. 43(1) — Emergency (Essential Powers) Ordinance, 1970, s. 2 — Prevention of Corruption Act, 1961, s. 2.

Judicial precedent — Doctrine of stare decisis — High Court bound by decision of Federal Court.

In this case the 1st accused was the Commissioner of the Malacca Municipality and also the executive chairman and shareholder of a housing development concern, Almac. Almac had submitted a lay-out plan and two sets of building plans for the approval of the Municipal Council and the plans were passed by the 1st accused. He was charged that in approving the plans he had used his public office for his pecuniary advantage and had thereby committed offences against section 2(1) of the Emergency (Essential Powers) Ordinance, 1970. The second accused was charged with abetment of the offence on the two occasions when he sat in the committee.

At the trial the learned trial judge at the close of the prosecution case held that of the two essential ingredients of the offence against the first accused, the prosecution had established his guilty mind but not that he was a public officer. He therefore acquitted and discharged the accused ([1979] 1 M.L.J. 166). On appeal by the Public Prosecutor the Federal